


Am. Auto. Ass'n v. J & T Body Shop, Inc., No. 3:10-cv-189-RJC-DCK, 2011 WL 5169399, at *1 (W.D.N.C. Oct. 31, 2011) (quoting Cameron v. MTD Prods., Inc., No. 5:03-cv-75, 2004 WL 3256003, at *2 (N.D.W. Va. Jan. 7, 2004)); accord Eagle Fire, Inc. v. Eagle Integrated Controls, Inc., No. 3:06-cv-264, WL 1720681, at *5 (E.D. Va. June 20, 2006) (“The entry of default is a procedural prerequisite to the entry of a default judgment.”). Thus, Rule 55 establishes a two-step process. Rule 55(a) provides that a clerk must enter default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. P. 55(a). Once the clerk enters default, the party may then seek a default judgment pursuant to Rule 55(b). Fed. R. Civ. P. 55(b). Entry of a default judgment under Rule 55(b) is appropriate “when a defendant fails ‘to plead or otherwise defend’ in accordance with the Rules.” U.S. v. Moradi, 673 F.2d 725, 727 (4th Cir. 1982).

Here, Plaintiff seeks default judgment, but the Clerk of Court has not yet entered default, nor has Plaintiff sought entry of default. Accordingly, default judgment is premature.

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Default Judgment, (Doc. No. 4), is **DENIED WITHOUT PREJUDICE** to refiling after the Clerk of Court has entered default.

IT IS SO ORDERED.

Signed: December 10, 2024


Frank D. Whitney
United States District Judge

